

Financial Advisor Business on similar terms and conditions, Independent Advisor chooses not to sell to AEFA, Independent Advisor has the right to withdraw the offer to enter into a continuity of practice agreement and continue operating his or her Independent Financial Advisor Business. If ninety (90) days prior to the proposed transfer, Independent Advisor has entered into a continuity of practice agreement and AEFA has not exercised the opportunity to buy or right of first refusal, described below, AEFA agrees to not have a right or option to purchase the Independent Financial Advisor Business at the time of the proposed transfer. In addition, if Independent Advisor has not entered into a continuity of practice agreement at least ninety (90) days prior to the proposed transfer, AEFA also shall have the right and option to purchase the Independent Financial Advisor Business on the same terms and conditions as described below. If AEFA elects to purchase the Independent Financial Advisor Business, closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by AEFA. If AEFA elects not to purchase the Independent Financial Advisor Business, any material change thereafter in the terms of the offer from a transferee shall constitute a new offer subject to the same rights of first refusal by AEFA as in the case of the transferee's initial offer. Failure of AEFA to exercise the option afforded by this Section shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section, with respect to a proposed transfer. In the event the consideration, terms, and/or conditions offered by a transferee are such that AEFA may not reasonably be required to furnish the same consideration, terms, and/or conditions, then AEFA may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the transferee, an independent appraiser shall be designated and mutually agreed upon by AEFA and Independent Advisor, at AEFA's expense, and the appraiser's determination shall be binding.

- AEFA encourages Independent Advisor, for a variety of business reasons, including anticipation of death or mental or physical incapacity, to execute an agreement with another Independent Advisor, consistent with the transfer of interest policies in this Section 14. The Independent Financial Advisor Business will immediately transfer to that Independent Advisor, upon the death or mental or physical incapacity of Independent Advisor. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer. In the event an agreement does not exist, AEFA, for a management fee, will manage the Independent Financial Advisor Business for up to ninety (90) days from the death or mental incapacity of Independent Advisor, until the executor can find a buyer for AEFA to approve. The management fee (further described in the Compensation Manual) is the compensation on the Independent Financial Advisor Business while a buyer is being located and approved. The estate is responsible for all expenses relating to the Independent Financial Advisor Business during this time. If the Independent Financial Advisor Business is not disposed of within ninety (90) days after such death or mental incapacity, AEFA may terminate this Agreement, pursuant to Section 17 hereof.
- AEFA's consent to a transfer of any interest in this Agreement or in all or substantially all of the assets of the Independent Financial Advisor Business shall not constitute a waiver of any

claims it may have against the transferring party, nor shall it be deemed a waiver of AEFA's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

15. COMPLIANCE AND INSPECTIONS

- Independent Advisor agrees to comply with the Compliance Rules as defined herein and the Individual Treatment Policy. Compliance with such laws, regulations, policies and procedures is required to ensure that AEFA and Independent Advisor are in good standing with the regulators. Independent Advisor agrees to timely obtain and maintain all licenses with AEFA necessary for the full and proper conduct of the Independent Financial Advisor Business and the offering of Products & Services, including any required NASD, state securities and/or insurance licenses, licenses to do business, state investment advisor registrations, sales tax permits, and/or clearances. Independent Advisor is an associated person of AEFA and agrees to be supervised for regulatory compliance purposes by the OSJ Branch Manager, Field Compliance Director or Field Compliance Supervisor, as described in the Client Relations Manual, and this compliance supervisor must be located in Independent Advisor's Market Group. To ensure a high level of securities and regulatory compliance, Independent Advisor agrees to promptly respond to requests for information and records from OSJ Branch Managers and AEFA employees and agents, and Field Compliance Directors.
- Independent Advisor agrees to, within 24 hours of the occurrence of any of the following events, notify AEFA of any: (i) inspection, investigation, or citation of Independent Advisor or the Independent Financial Advisor Business by NASD, state securities regulators, state insurance commissioners or any other governmental or regulatory agencies; (ii) suspension of any license related to the Independent Financial Advisor Business or the sale of any Products or Services; (iii) alleged violation of any federal, state, local, or NASD laws or regulations related to Products or Services, or to the Independent Financial Advisor Business; (iv) action, suit, disciplinary proceeding or other proceeding, and/or the issuance of any fine, sanction, order, writ, injunction, award, or decree of NASD or any court, regulator, agency, or other governmental instrumentality, against Independent Advisor or which may adversely affect Independent Advisor or the operation or financial condition of the Independent Financial Advisor Business; or (v) Client complaints.
- Independent Advisor agrees to permit AEFA, the OSJ Branch Managers, AEFA's agents, and governmental and regulatory agencies required to have access by law (collectively, the "Inspectors") to enter upon the Premises at any time, with or without notice to Independent Advisor, during normal business hours for the purpose of conducting inspections to confirm compliance with the terms of this Agreement, the Manuals and Compliance Rules; shall cooperate with Inspectors in such inspections by rendering such assistance as they may reasonably request, including access to all books and records, including computerized books and records; and, upon notice from Inspectors, and without limiting AEFA's other rights under this Agreement, shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection within a reasonable time as determined by AEFA.

- In accordance with NASD requirements, AEFA agrees to investigate and resolve complaints and compliance issues involving Independent Advisor. AEFA agrees to provide Independent Advisor with an opportunity to respond to complaints and supply documentation, but AEFA maintains the right to settle these issues. Independent Advisor will have access to an internal appeals process should a dispute on the resolution of a case occur. AEFA may assess applicable settlement costs, subject to whatever offsets, if any, are afforded Independent Advisor by the AEFA errors and omissions program, and fines against Independent Advisor for failure to comply with regulatory requirements and company policies as set forth in the Client Relations Manual. These costs and fines may be deducted directly from Independent Advisor's Compensation or any amounts otherwise due to Independent Advisor by AEFA; however, AEFA agrees to allow either or both to be paid directly to AEFA should the Independent Advisor so choose.

16. SPECIAL REGULATORY SUPERVISION

- Upon the occurrence of any of the following events, AEFA may place Independent Advisor on special regulatory supervision for a period of time determined by AEFA ("Special Regulatory Supervision") and place certain restrictions on Independent Advisor and the Independent Financial Advisor Business (the "Terms of Special Regulatory Supervision") which may, at AEFA's option, include: (i) terminating some of Independent Advisor's rights to offer Products & Services; (ii) suspending or placing restrictions on Independent Advisor's rights to operate the Independent Financial Advisor Business and/or offer Products & Services; (iii) requiring Independent Advisor to obtain additional training; (iv) imposing heightened supervision of Independent Advisor and the Independent Financial Advisor Business; (v) reducing the payout to which Independent Advisor would otherwise be entitled; and (vi) such other requirements that AEFA may require, effective immediately upon the provision of notice to Independent Advisor (in the manner provided under Section 23 hereof):
  - a. If Independent Advisor shall become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy, or such a petition is filed against and not successfully opposed by Independent Advisor; if Independent Advisor is adjudicated a bankrupt or insolvent; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); or if Independent Advisor makes a compromise with creditors;
  - b. If Independent Advisor is under investigation by NASD or other self-regulatory organizations, state securities regulators, or any other governmental or regulatory agencies;
  - c. If there is an allegation (including any allegation by a Client) that Independent Advisor violated any Compliance Rules related to the Independent Financial Advisor Business; or
  - d. If Independent Advisor fails to substantially comply with any of the requirements imposed by this Agreement (including, without limitation, those identified in Section 17 below) or failure to carry out the terms of this Agreement in good faith.

- Upon notice from AEFA that Independent Advisor has been placed on Special Regulatory Supervision and the Terms of Special Regulatory Supervision, Independent Advisor agrees to immediately comply with the Terms of Special Regulatory Supervision. Independent Advisor's failure to comply with the Terms of Special Regulatory Supervision shall be a default under the "Immediate Termination" provision of Section 17, below.

17. DEFAULT AND TERMINATION

- Termination by Independent Advisor. Independent Advisor may terminate this Agreement upon fourteen (14) days written notice to AEFA in the manner provided in Section 23 hereof and, if applicable, Addendum No. 3 hereto. The termination shall take effect on the date specified in the notice or as directed by AEFA.
- Immediate Termination with Cause. Upon the occurrence of any of the following events of default, AEFA may, at its option, terminate this Agreement and all rights granted hereunder, which events shall constitute good cause to the extent permitted by law, without affording Independent Advisor any opportunity to cure the default, effective immediately upon the provision of notice to Independent Advisor (in the manner provided under Section 23 hereof). In the event AEFA believes any law may prohibit the immediate termination of this Agreement, AEFA may immediately suspend Independent Advisor, who shall remain suspended until such time as AEFA either terminates this Agreement or ends the suspension. Any Independent Advisor who is suspended must temporarily cease operations, although such Independent Advisor will receive all Compensation that Independent Advisor is entitled pursuant to the Manuals to receive at the time the suspension is lifted.
  - a. If Independent Advisor fails to locate an approved site or to open the Independent Financial Advisor Business within the time limits provided in Section 6 of this Agreement;
  - b. If Independent Advisor fails to complete the initial orientation program described in Section 7 hereof to AEFA's satisfaction;
  - c. If Independent Advisor at any time ceases to operate or otherwise abandons the Independent Financial Advisor Business, enters into an unauthorized agency agreement with a competitor or imminently plans to do so, or otherwise forfeits the right to do or transact business in the jurisdiction where the Independent Financial Advisor Business is located. However, if, through no fault of Independent Advisor, the Premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within sixty (60) days thereafter or Independent Advisor loses the right to possession of the Premises, then Independent Advisor agrees to have sixty (60) days after such event in which to apply for AEFA's approval to relocate the Independent Financial Advisor Business, which approval shall not be unreasonably withheld;
  - d. If Independent Advisor is charged with, pleads nolo contendere to, or is convicted of a felony, a crime involving moral turpitude or dishonesty, or any other crime or offense that AEFA believes is reasonably likely to have an

adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or AEFA's interest therein;

- e. If Independent Advisor fails to obtain or loses any appropriate licenses which may be required by AEFA, NASD, and governmental and regulatory agencies to operate the Independent Financial Advisor Business or offer Products & Services;
- f. If any purported assignment or transfer of any direct or indirect interest in this Agreement or in all or substantially all of the assets of the Independent Financial Advisor Business is made to any transferee without AEFA's prior written consent, contrary to the terms of Section 14 hereof;
- g. If an approved transfer is not effected within the time provided following death or mental incapacity, as required by Section 14 hereof;
- h. If Independent Advisor fails to comply with the covenants in Section 19 hereof or fails to obtain execution of the covenants required under Sections 10 or 19 hereof;
- i. If, contrary to the terms of Sections 9 or 10 hereof, Independent Advisor discloses or divulges the contents of the Manuals or other confidential information provided to Independent Advisor by AEFA;
- j. If Independent Advisor knowingly maintains false books or records, or submits any false reports to AEFA;
- k. If Independent Advisor is involved in misappropriating monies, fails to timely transmit Client funds or securities to AEFA, or engages in unauthorized activities or violates the Compliance Rules and/or the Individual Treatment Policy.
- l. If Independent Advisor misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristics of the System, or otherwise materially impairs the goodwill associated therewith or AEFA's rights therein;
- m. If Independent Advisor refuses to permit an Inspector to inspect the Premises, or the books, records, or accounts of Independent Advisor upon demand;
- n. If Independent Advisor, upon receiving a notice of default under Section 17 hereof entitled "Termination with an Opportunity to Cure Within Thirty (30) Days," fails to initiate immediately a remedy to cure such default;
- o. If Independent Advisor, after curing a default pursuant to Section 17 hereof entitled "Termination with an Opportunity to Cure Within Thirty (30) Days," commits the same default again, whether or not cured after notice;



- p. If Independent Advisor fails to comply with the Terms of Special Regulatory Supervision; or
- q. If Independent Advisor is alleged to have violated Federal or state civil or common law that AEFA believes is reasonable likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or AEFA's interest therein.
- Termination with an Opportunity to Cure Within Thirty (30) Days. Except as otherwise provided in Section 17 entitled "Immediate Termination" and Section 17 entitled "Termination with an Opportunity to Cure within One (1) Year," upon any other default by Independent Advisor, AEFA may terminate this Agreement by giving written notice of termination (in the manner set forth under Section 23 hereof) stating the nature of the default to Independent Advisor at least thirty (30) days prior to the effective date of termination; provided, however, that Independent Advisor may avoid termination by immediately initiating a remedy to cure such default, curing it to AEFA's satisfaction, and by promptly providing proof thereof to AEFA within the thirty (30) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Independent Advisor, effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require and AEFA may re-assign any Clients assigned to the Independent Advisor. Defaults which are susceptible of cure hereunder include the following illustrative events:
  - a. If Independent Advisor fails to substantially comply with any of the requirements imposed by this Agreement.
  - b. If Independent Advisor fails, refuses, or neglects promptly to pay any monies owing to AEFA or its affiliates when due, or to submit the financial or other information required by AEFA under this Agreement:
  - c. Except as provided in Section 17 entitled "Immediate Termination," if Independent Advisor fails, refuses, or neglects to obtain AEFA's prior written approval or consent as required by this Agreement; or
  - d. If Independent Advisor engages in any business or markets any service or product under a name or mark which, in AEFA's opinion, is confusingly similar to the Proprietary Marks.
- Termination with an Opportunity to Cure within One (1) Year. Upon the occurrence of any of the following events of default, determined as of the first anniversary of this Agreement and annually thereafter, AEFA may, at its option, terminate this Agreement and all rights granted hereunder, by giving written notice of termination (in the manner set forth under Section 23 hereof) stating the nature of the default to Independent Advisor one (1) year prior to the effective date of termination; provided, however, that Independent Advisor may avoid termination by immediately initiating a remedy to cure such default, curing it to AEFA's satisfaction, and by providing proof thereof to AEFA within such one (1) year period. If any such default is not cured within the one (1) year period, this Agreement shall terminate

without further notice to Independent Advisor, effective immediately upon the expiration of such one (1) year period.

- a. If Independent Advisor fails to maintain Quality of Advice Standards of at least level three (3).
  - b. If Independent Advisor fails to maintain Client Satisfaction Standards of at least seventy percent (70%), as more fully described in the Manuals.
  - c. If Independent Advisor fails to maintain an office with the fixtures, furnishings and equipment necessary to maintain professional standards for the operation of the Independent Financial Advisor Business or if Independent Advisor fails to install signs as provided in the Manuals.
  - d. If Independent Advisor fails to meet the financial planning standards set forth in Section 5.
- Subject to AEFA and affiliated broker-dealer policies, AEFA agrees to allow the Independent Advisor to terminate this Agreement and move to an affiliated broker-dealer. (e.g. Securities America).

#### 18. OBLIGATIONS UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, all rights granted hereunder to Independent Advisor shall forthwith terminate although Independent Advisor's duties under this Agreement shall continue as specified in this Section 18, and:

- Independent Advisor agrees to immediately cease to operate the Independent Financial Advisor Business, and Independent Advisor agrees to not thereafter, directly or indirectly, represent to the public or hold himself or herself out as a present or former franchisee of AEFA.
- If this Agreement is terminated for reasons outlined in Section 17, AEFA will honor any agreement with another Independent Advisor, consistent with the transfer of interest policies in Section 14, or, Independent Advisor can attempt to locate a buyer for AEFA to approve. AEFA, for a management fee, will manage the Independent Financial Advisor Business for up to ninety (90) days until a buyer can be found and approved. The management fee (further defined in the Compensation Manual) is the compensation on the Independent Financial Advisor Business while a buyer is being located and approved. If a buyer is not found and approved within the ninety (90) days after such termination, the Independent Financial Advisor Business terminates the right to the equity. In the interests of good client relationships, AEFA will assume continuous service to all Clients.
- Independent Advisor agrees to immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures, and techniques associated with the System; the Proprietary Marks; and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Independent Advisor agrees to cease to use.

without limitation, all signs, advertising materials, displays, stationery, forms, products, and any other articles which display the Proprietary Marks.

- Independent Advisor agrees to make such modifications or alterations to the Premises immediately upon termination or expiration of this Agreement as may be necessary to distinguish the Premises from that of the Independent Financial Advisor Business under the System, and shall make such specific additional changes thereto as AEFA may reasonably request for that purpose. In the event Independent Advisor fails or refuses to comply with the requirements of this Section 18, AEFA agrees to have the right to enter upon the Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Independent Advisor, which expense Independent Advisor agrees to pay upon demand.
- Independent Advisor agrees to immediately cease using any telephone number used by Independent Advisor in the Independent Financial Advisor Business. AEFA agrees to immediately cease using the telephone number unless the telephone number is for an Area Office or other AEFA-leased space. At AEFA's expense, AEFA reserves the right to add a forwarding message to any such telephone number, indicating the telephone number for AEFA and for the departing Independent Advisor.
- Independent Advisor agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which, in AEFA's sole discretion, is likely to cause confusion, mistake, or deception, or which, in AEFA's sole discretion, is likely to dilute AEFA's rights in and to the Proprietary Marks. Independent Advisor further agrees not to utilize any designation of origin, description, or representation (including but not limited to reference to AEFA, the System, or the Proprietary Marks) which, in AEFA's sole discretion, suggests or represents a present or former association or connection with AEFA, the System, or the Proprietary Marks.
- Independent Advisor agrees to promptly pay all sums owing to AEFA and its affiliates. In the event of termination for any default of Independent Advisor, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by AEFA as a result of the default.
- Independent Advisor agrees to immediately deliver to AEFA the Manuals and all other original records, including most recent financial plans and recommendations, computer databases and files, correspondence, and instructions containing confidential information relating to the System (and any copies thereof, including electronic or computer generated copies, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of AEFA. To satisfy regulatory requirements, Independent Advisor agrees to immediately deliver to AEFA the originals of all Client records, including records containing Client lists and/or information and transactions belonging to AEFA, unless Independent Advisor transfers the Independent Financial Advisor Business as provided in Section 14.



- Independent Advisor agrees to immediately (i) discontinue use of any computer software developed for the System or AEFA, (ii) deliver to AEFA all such computer software in Independent Advisor's possession or control and any copies made of such computer software, (iii) erase or destroy any of such computer software contained in the computers or data storage devices under the control of Independent Advisor, and (iv) remove such computer software from any other computer programs or software in Independent Advisor's possession or control that incorporates or used such computer software in whole or in part.
- Independent Advisor agrees to comply with the covenants contained in Section 19 of this Agreement.

#### 19. COVENANTS

- Independent Advisor covenants that, during the term of this Agreement, Independent Advisor agrees to (i) devote best efforts to the management and operation of the Independent Financial Advisor Business, and (ii) except as otherwise approved in writing by AEFA or after providing notice to AEFA as specified in the Manuals, not be employed or engage in other business activities outside the Independent Financial Advisor Business.
- Independent Advisor specifically acknowledges that, pursuant to this Agreement, Independent Advisor will receive additional substantive rights as a franchisee of AEFA. Independent Advisor also recognizes he or she will receive valuable and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of AEFA and the System. In recognition of and in consideration for these and other benefits, to protect the confidentiality of AEFA's Client information and to protect AEFA's goodwill, Independent Advisor covenants that (a) during the term of this Agreement and (b) for one year after the expiration or termination of this Agreement in the geographic area within which Independent Advisor operates or operated, Independent Advisor agrees to not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or entity:
  - (1) Encourage, assist, participate, induce, or attempt to induce any Client or prospective business or customer to terminate an agreement with AEFA, AEFA's affiliates, Issuers, or any financial advisor business under the System;
  - (2) Encourage, assist, participate, induce, or attempt to induce any Client or prospective business or customer to terminate, surrender, redeem, or cancel any action related to Products & Services acquired or ordered from or through AEFA, AEFA's affiliates, Issuers, or any financial advisor business under the System, except as provided in the Manuals or with AEFA's written approval and consent;
  - (3) Solicit any Clients that Independent Advisor contacted, serviced or learned about while operating under this Agreement to open an account other than an AEFA account or to sell any investment, financial or insurance products or services other than through AEFA with AEFA's written approval and consent; or

- (4) Open an account for, or provide or offer to provide any investment, financial, or insurance products or services to any Clients that Independent Advisor contacted, serviced or learned about while operating under this Agreement.
- b. (1) Employ, or retain as an independent contractor, any person who is at that time employed by AEFA or associated with AEFA as an independent contractor or agent or by any other Independent Advisor of AEFA, or otherwise directly or indirectly induce such person to leave his or her employment, association or independent contractor relationship with AEFA; or
- (2) Disparage AEFA, its affiliates, employees, advisors, and Products & Services.

For purposes of this Section, an "Issuer" is a company or entity that issues Products & Services distributed or offered by AEFA, AEFA's affiliates, or AEFA as the agent of another company.

- Independent Advisor understands and acknowledges that if Independent Advisor terminates this Agreement, AEFA shall have the right to continue to actively offer all Products and Services to Clients the Independent Advisor serviced at AEFA.
- Upon expiration of this Agreement, Independent Advisor may have a right to revenue based on past Products & Services that have been purchased by Clients through the Independent Financial Advisor Business, as provided for in the Manuals, or with AEFA's approval and consent.
- Independent Advisor understands and acknowledges that AEFA shall have the right, in its sole discretion, to reduce the scope or restrictiveness of any covenant set forth above, or any portion thereof, without Independent Advisor's consent, effective immediately upon receipt by Independent Advisor of written notice thereof; and Independent Advisor agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 24 hereof. Independent Advisor agrees and understands that AEFA's exercise of such discretion, as to the Independent Advisor who is the subject of this Agreement, or of any other Independent Advisor, shall not constitute a waiver of any of AEFA's right to enforce this or any other agreements.
- Independent Advisor expressly agrees that the existence of any claims it may have against AEFA, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by AEFA of the covenants in this Section 19.
- At AEFA's request, Independent Advisor agrees to obtain and furnish to AEFA executed covenants similar in substance to those set forth in this Section 19 and, at the Independent Advisor's discretion, Addendum No. 3 (including covenants applicable upon the termination of a person's relationship with Independent Advisor and the provisions of Section 10 of this Agreement) from personnel (identified in the Manuals) employed or retained as an

independent contractor by Independent Advisor or his/her agent. Every covenant required by this Section shall be in a form approved by AEFA, including, without limitation, specific identification of AEFA as a third-party beneficiary of such covenants with the independent right to enforce them.

- Independent Advisor agrees that to the fullest extent permitted by applicable law, AEFA will be entitled to injunctive relief from a court or NASD arbitration should Independent Advisor violate any of the covenants in this Section 19 and in Sections 10 and 18 (the "Sections") of this Agreement. Independent Advisor recognizes that AEFA's remedies solely at law will be inadequate, that AEFA will be irreparably harmed by violations of the provisions in the Sections, and thus that AEFA will be entitled to injunctive relief to prevent future violations of the provisions in the Sections until a full and final resolution of any dispute may be had on the merits. If Independent Advisor has signed Addendum No. 3 but fails to comply with it, AEFA shall be entitled to immediate injunctive relief to enforce at AEFA's option, the covenants in Section 19, including 19(a) (1), (2), (3), and (4) and/or of Addendum 3. AEFA has the right to seek such injunctive relief in a court of competent jurisdiction, which relief shall extend until, and if, a decision on the merits of the same issue is rendered by an NASD arbitration panel. Such election by AEFA to seek judicial relief shall not waive any rights AEFA may have to arbitrate disputes arising under this Agreement, including rights to obtain damages from Independent Advisor in arbitration for violations of this Agreement.
- Nothing in this Agreement will prevent Independent Advisor from engaging in a competitive business consistent with the covenants in this Section 19, including serving as a financial advisor or consultant affiliated with another firm, after this Agreement expires or is terminated. Nothing in this Agreement will prohibit Independent Advisor from soliciting and servicing any Clients that Independent Advisor contacted, serviced or learned about while operating under an agreement with AEFA more than one year after this Agreement terminates or expires, provided that Independent Advisor makes no use directly or indirectly of any confidential or trade secret information, including but not limited to client files and lists obtained from AEFA.
- Upon Independent Advisor's request, AEFA may in its complete discretion release Independent Advisor from any provisions in this Section 19, in whole or in part, for example to exclude specified family members from the provisions in this Section 19. Such requests by Independent Advisor must be in writing and any release to Independent Advisor must be in writing and signed by an officer of AEFA. Any such release shall not act as a waiver of any other of AEFA's rights under this Agreement as such rights apply to any other Independent Advisor.
- AEFA agrees that clients who Independent Advisor purchased a direct or indirect interest in or obtained outside of the AEFA System and transferred to AEFA are not subject to Section 19 (a) (1), (2), (3) and (4).

## 20. TAXES, PERMITS, AND INDEBTEDNESS

- Independent Advisor agrees to promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Independent Advisor in the operation of the

Independent Financial Advisor Business. Independent Advisor agrees to pay to AEFA an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on AEFA with respect to any payments to AEFA required under this Agreement, unless the tax is credited against income tax otherwise payable by AEFA.

- In the event of any bona fide dispute as to Independent Advisor's liability for taxes assessed or other indebtedness, Independent Advisor may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event shall Independent Advisor permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the Premises of the Independent Financial Advisor Business, or any improvements thereon.

## 21. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- This Agreement does not create a fiduciary duty on behalf of AEFA to the Independent Advisor. Independent Advisor agrees to be an independent contractor, and nothing in this Agreement is intended to constitute AEFA as an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the Independent Advisor for any purpose whatsoever.
- During the term of this Agreement, Independent Advisor agrees to hold himself or herself out to the public as an independent contractor operating the Independent Financial Advisor Business. Independent Advisor agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Premises, the content of which AEFA reserves the right to specify. Nothing in this Agreement authorizes Independent Advisor to make any contract, agreement, warranty, or representation on AEFA's behalf, or to incur any debt or other obligation in AEFA's name; and AEFA agrees to in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall AEFA be liable by reason of any act or omission of Independent Advisor in his or her operation of the Independent Financial Advisor Business or for any claim or judgment arising therefrom against Independent Advisor or AEFA.
- To the extent permitted by law and not covered by the errors and omission program pursuant to Section 13, Independent Advisor agrees to indemnify and hold harmless AEFA and its affiliates, and their respective officers, directors, agents, employees, successors and assigns (the "Indemnitees"), against any and all causes of action, claims, demands, liabilities, losses, damages, actions, litigation or other expenses (including, but not limited to, interest, costs of investigation, settlement costs, and attorneys' fees) arising out of or relating to Independent Advisor's establishment or operation of the Independent Financial Advisor Business, except for any claim based solely on the willful misconduct or gross negligence of AEFA or its officers, agents and employees, or based solely on nonperformance by AEFA of its obligations hereunder. Independent Advisor agrees that with respect to any threatened or actual litigation, proceeding or dispute which could directly or indirectly affect any of the Indemnitees, the Indemnitees shall have the right, but not the obligation, to: (i) choose counsel, (ii) direct, manage and/or control the handling of the matter, and (iii) settle on behalf of the Indemnitees, and/or Independent Advisor, any claim against the Indemnitees in their sole discretion. All vouchers, canceled checks, receipts, receipted bills or other evidence of payments for any such losses, liabilities, costs, damages, charges or expenses of

whatsoever nature incurred by any Indemnitee shall be taken as prima facie evidence of Independent Advisor's obligation hereunder. AEFA may require Independent Advisor to reimburse AEFA for all expenses (including attorneys' fees) reasonably incurred by AEFA to enforce the terms of this Agreement or any obligation owed by Independent Advisor to AEFA under this Agreement or otherwise, including, without limitation, Independent Advisor's indemnification obligations.

## 22. APPROVALS AND WAIVERS

- Whenever this Agreement requires the prior approval or consent of AEFA, Independent Advisor agrees to make a timely written request to AEFA therefor, and such approval or consent must be obtained in writing from an officer of AEFA. AEFA will respond to such requests within a timeframe reasonable under the circumstances.
- AEFA makes no warranties or guarantees upon which Independent Advisor may rely, and assumes no liability or obligation to Independent Advisor, by providing any waiver, approval, consent, or suggestion to Independent Advisor in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.
- No failure of AEFA to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Independent Advisor with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of AEFA's right to demand exact compliance with any of the terms hereof. Waiver by AEFA of any particular default of Independent Advisor shall not affect or impair AEFA's rights with respect to any subsequent default of the same, similar, or different nature; nor shall any delay, forbearance, or omission of AEFA to exercise any power or right arising out of any breach of default by Independent Advisor of any of the terms, provisions, or covenants hereof, affect or impair AEFA's right to exercise the same, nor shall such constitute a waiver by AEFA of any right hereunder, or the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by AEFA of any payments due to it hereunder shall not be deemed to be a waiver by AEFA of any preceding breach by Independent Advisor of any terms, covenants, or conditions of this Agreement.

## 23. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be: personally delivered; sent by facsimile/telecopier (if confirmed by mail); mailed by certified mail, return receipt requested; or dispatched by overnight delivery envelope, to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to AEFA:  
 American Express Financial Advisors Inc.  
 IDS Tower 10  
 733 Marquette Avenue  
 Minneapolis, Minnesota 55440  
 Attn: Unit 1523



Notices to Independent Advisor will be made to the Independent Advisor's preferred business address on record at AEFA.

Any notice by a means which affords the sender evidence of delivery or rejected delivery shall be deemed to have been given and received at the date and time of receipt or rejected delivery.

24. ENTIRE AGREEMENT

This Agreement, the attachments hereto, and the documents referred to herein constitute the entire Agreement between AEFA and Independent Advisor concerning the subject matter hereof, and supersede all prior and contemporaneous agreements, negotiations and representations (written and oral), no other representations having induced Independent Advisor to execute this Agreement. No party is relying on any agreement or representation, or bound by any other agreement or obligation concerning the subject matter of this Agreement that is not expressly set forth herein. Except for those permitted to be made unilaterally by AEFA hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

25. SEVERABILITY AND CONSTRUCTION

- If, for any reason, any section, part, term, provision, and/or covenant herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, provisions, and/or covenants of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement.
- Any provision or covenant in this Agreement which expressly or by its nature imposes obligations beyond the expiration, termination, or assignment of this Agreement (regardless of cause for termination) shall survive such expiration, termination, or assignment, including but not limited to Sections 10, 19, 21, and 26.
- Independent Advisor expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court, regulator, or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which AEFA is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court, regulator, or agency order.

26. APPLICABLE LAW

- This Agreement shall be interpreted and construed exclusively under the laws of the State of Minnesota. In the event of any conflict of law, the laws of Minnesota shall prevail, without regard to the application of Minnesota conflict-of-law rules; except that all issues relating to

020-60-1225

- Except as provided in Section 19, any claim or controversy arising out of, or related to, this Agreement, or the offer, making, performance, or interpretation thereof, shall be finally settled by arbitration unless otherwise agreed to by the parties. Except as provided in Section 19, arbitration shall be conducted pursuant to the NASD Code of Arbitration Procedure and other applicable rules of the NASD. By agreement of the parties, disputes may be resolved in arbitration conducted by a mutually agreed upon organization.
- No right or remedy conferred upon or reserved to AEFA or Independent Advisor by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.
- AEFA and Independent Advisor irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.
- AEFA and Independent Advisor hereby waive to the fullest extent permitted by law any right to, or claim of, any punitive or exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.
- Nothing herein contained shall bar AEFA's right to obtain injunctive relief against conduct or threatened conduct that (i) will cause it loss or damage or (ii) violates the Terms of Special Regulatory Supervision or (iii) is in violation of AEFA's obligation to comply fully with government agency laws or regulations under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders, and preliminary injunctions.

## 27. ACKNOWLEDGMENTS

- Independent Advisor acknowledges that it has conducted an independent investigation of the Independent Financial Advisor Business, and recognizes that the business venture contemplated by this Agreement involves significant business risks and that its success will be largely dependent upon the ability of Independent Advisor as an independent businessperson. AEFA expressly disclaims the making of, and Independent Advisor acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.
- Independent Advisor acknowledges that it received a complete copy of this Agreement, the attachments hereto, and agreements relating thereto, if any, at least five (5) business days prior to the date on which this Agreement was executed. Independent Advisor further acknowledges that it received the disclosure document required by the Trade Regulation Rule

of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" at least ten (10) business days prior to the date on which this Agreement was executed.

- Independent Advisor acknowledges that it has read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that AEFA has accorded Independent Advisor ample time and opportunity to consult with advisors of Independent Advisor's own choosing about the potential benefits and risks of entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate on the date first above written.

Independent Advisor

By: [Signature]  
 Name: Neil Gendreau  
 Title: Independent Advisor  
 Date: 12/15/99  
 Social Security No.: 020-60-1225  
 Advisor No.: 91325-1

American Express Financial Advisors Inc.

By: [Signature]  
 Name: [Signature]  
 Title: Asst Sec  
 Date: MAR 22 2000